

## **I. Approval of Settlement**

These proceedings involve PCTV's, WBS-WP's and the University's mutually exclusive applications concerning stations in the Instructional Television Fixed Service ("ITFS") on the D group channels in the West Palm Beach, Florida, market (the "Market"). Also involved are the parties' proposals to modify existing and proposed ITFS facilities in the Market and to submit others for cancellation in order to allow for better and more spectrum-efficient service to the parties' receive sites.

PCTV's and WBS-WP's proposal to migrate the District's D group station is contained in the Petition for Displacement and application (the "Displacement Application") filed on December 29, 1993.<sup>1</sup> The University's D group proposal is contained in the application in file no. BPLIF-920814DB. PCTV is the conditional licensee of MMDS E group station WMI841. This station cannot be constructed or operated because of the District's grandfathered E group ITFS facility, station KHU-90. WBS-WP is a wireless cable operator currently developing a wireless cable system in the Market which will include PCTV's E group station. Accordingly, PCTV and WBS-WP filed the Displacement Application on December 29, 1993. WBS-WP entered into excess capacity lease agreements with the University in July 1994 and the District in January 1995.

To provide for the private resolution of the mutually exclusive D group proposals, to achieve better and more spectrum-efficient service to the educational licensees' receive sites, and to allow for the commercial use of the E group channels and the development of a wireless cable system in the Area, the parties have entered into a Market Settlement Agreement ("Agreement"),

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<sup>1</sup> With respect to the Displacement Application, WBS-WP is the successor to WJB-TV Ft. Pierce Limited Partnership, whose name appeared in the Displacement Application.



which is attached hereto as Exhibit 1. The parties respectfully request the Commission's approval of the Agreement.

At present, though a large number of ITFS stations are operating from various sites in the Market, these stations are not designed, constructed, or operated in a coordinated manner. Some stations are used as repeaters or relay stations. Several stations have been in existence for many years and do not employ the latest and best available technology. No commercial MDS/MMDS stations are operational in the area. As described above, PCTV, the commercial E group conditional licensee, has been unable to construct its E group station because of the District's grandfathered ITFS station on the same frequency group. Finally, the H group channels are not available for commercial use because they are presently utilized by the District.

The parties to the Agreement constitute the licensees or applicants for all of the ITFS and MDS/MMDS channels (except MDS channels 1 and 2A) in the Market. The arrangements outlined herein have been the subject of negotiations between various of these parties for over two years. Through this settlement the parties expect to accomplish the following:

1. to resolve the mutual exclusivity between the D group ITFS applications;
2. to ensure that each of the stations is able to reach all desired educational receive sites in Palm Beach County, thus eliminating the present use of duplicate stations, point-to-point stations, and repeater stations;
3. to ensure the most economical and efficient usage of the spectrum and eliminate disputes between the parties as to that usage;
4. to coordinate the operation and maintenance of these stations, thus taking advantage of possible economies of scale and efficiencies;
5. to collocate all of the ITFS and MDS/MMDS stations in the market at a single transmitter site, thus reducing the possibility of interference between these stations;
6. to develop modern, efficient ITFS systems for both the University and the



District;

7. to allow for the development of a wireless cable television system to serve the public and provide competition in the multichannel video delivery marketplace in the Market;
8. to generate royalties for the benefit of the University and the District to provide a source of funding for their instructional television ventures; and
9. to allow for the carriage by the wireless cable television system of at least some of the District's and the University's programming, so as to enable the public to receive in-home instructional programming, possibly for credit.

A summary of the necessary filings is attached hereto as Exhibit 2.

WBS-WP and PCTV have committed to comply with the requirements of the Commission's Rules and policies for involuntary ITFS migration, as they relate to the posting of a bond and other matters, in the event the Displacement Application is granted.

As attested in the attached declarations, no monetary consideration was exchanged among the parties in consideration for the settlement, and no applications were filed in order to procure the settlement. Because the public interest, convenience and necessity would best be served thereby, the parties respectfully request the Commission to approve the attached Market Settlement Agreement.

## **II. Request for Waiver of Cut-off Rules**

The District and the University also respectfully request waiver of the Commission's cut-off rules in the processing of the major modification applications, and major amendments to pending applications, filed to accommodate the settlement. Waiver of the cut-off rules for major change applications may be granted to accommodate settlement agreements between mutually-exclusive applicants. Memorandum Opinion and Order in MM Docket No. 83-523 (Instructional Television Fixed Service Reconsideration), 59 RR 2d 1355, 1381 n.47 (1986).



Although mutually exclusive applications exist only for the D group, the parties request waiver of the cut-off rules as to all applications described in the Agreement. A summary of these applications is attached hereto as Exhibit 2. Such a waiver is justified for four reasons.

First, the broader channel rearrangement and collocation plan contemplated by the Agreement was necessary to resolve the competing D group proposals. Without the channel reorganization plan, which is only possible through collocation, the D group settlement will collapse. Thus, all of the modifications listed in Exhibit 2 are necessary to the resolution of the mutual exclusivity and therefore fall within the ambit of footnote 47.

Second, the public interest will best be served by waiving the cut-off rules as to all applications contemplated in the settlement, because the settlement provides for optimal use of the microwave spectrum in the Market. In addition to eliminating duplicative and inefficient use of ITFS frequencies, the applications contemplated in the settlement will allow for use of the E and H channels for the commercial use to which they are primarily allocated.

Third, granting waiver of the cut-off rules to all of the applications will not extend waiver beyond the parties whose mutually exclusive proposals are resolved in the settlement.

Fourth, the channel reorganization plan will allow WBS-WP to provide competitive, wireless cable operations to the Market. There is no such competition now. Rapid implementation of wireless cable service will serve the Commission's goals for commercial use of the MMDS/ITFS spectrum.



WHEREFORE, the parties respectfully request that the Commission approve the attached Market Settlement Agreement, exempt the applications it describes from the cut-off rules, and expeditiously process the applications filed in furtherance hereof.

Respectfully submitted,

SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

By William D. Wallace  
William D. Wallace  
Its Attorney

**CROWELL & MORING**  
1001 Pennsylvania Avenue, NW  
Washington, D.C. 20004  
(202) 624-2807

Respectfully submitted,

The Board of Regents, a Public Corporation  
of the State of Florida, on behalf of  
FLORIDA ATLANTIC UNIVERSITY

By \_\_\_\_\_  
Gregg Gleason  
General Counsel

**BOARD OF REGENTS' OFFICE**  
325 West Gaines St., Suite 1522  
Tallahassee, Florida 32399  
(904) 488-5441

PEOPLE'S CHOICE TV, INC. and  
WIRELESS BROADCASTING SYSTEMS  
OF WEST PALM BEACH, INC.

By \_\_\_\_\_  
L. Charles Keller  
Their Attorney

**PEPPER & CORAZZINI, L.L.P.**  
1776 K Street, N.W., Suite 200  
Washington, D.C. 20006  
(202) 296-0600

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Its Attorney

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Respectfully submitted,

The Board of Regents, a Public Corporation  
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FLORIDA ATLANTIC UNIVERSITY

By Gregg A. Gleason  
Gregg Gleason  
General Counsel

BOARD OF REGENTS' OFFICE  
325 West Gaines St., Suite 1522  
Tallahassee, Florida 32399  
(904) 488-5441

PEOPLE'S CHOICE TV, INC. and  
WIRELESS BROADCASTING SYSTEMS  
OF WEST PALM BEACH, INC.

By L. Charles Keller  
L. Charles Keller  
Their Attorney

PEPPER & CORAZZINI, L.L.P.  
1776 K Street, N.W., Suite 200  
Washington, D.C. 20006  
(202) 296-0600

May 24, 1995

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## MARKET SETTLEMENT AGREEMENT

THIS MARKET SETTLEMENT AGREEMENT ("Agreement") is entered into by and among the School District of Palm Beach County, Florida (the "District"); The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University (the "University"); Wireless Broadcasting Systems of West Palm Beach, Inc. ("WBS-WP"); and People's Choice TV, Inc. ("PCTV").

WHEREAS, the District is the licensee of Instructional Television Fixed Service ("ITFS") stations KZB-28 on the A group at Belle Glade, Florida; KZB-29 on the G group at Riviera Beach, Florida; WHR-973 on channel G3 at West Palm Beach, Florida; WHR-994 on channels G2-G3 at West Palm Beach, Florida; KZB-30 on channels H1-H3 at Loxahatchee, Florida; and KHU-90 on the E group at Boynton Beach, Florida, which is the subject of a Petition for Displacement to the D group channels.

WHEREAS, the University is the licensee of ITFS stations WLX-269 on the A group at Palm Beach, Florida; WHR-877 on the A group at Boca Raton, Florida; WHR-894 on the A group at Boca Raton, Florida; WHR-895 on the A group at Boca Raton, Florida, WHR-896 on the B group at Boynton Beach, Florida; WHR-897 on the C group at Ft. Lauderdale, Florida; WHR-901 on the C group at Palm Beach, Florida; and is the applicant in File No. BPLIF-920814DB for the D group channels at Palm Beach Florida;

WHEREAS, the District and the University currently use some of their ITFS channels either as repeaters or as relays;



WHEREAS, PCTV is the conditional licensee of Multichannel Multipoint Distribution Service ("MMDS") station WMI841 on the E group channels at West Palm Beach, Florida;

WHEREAS, WBS-WP is a wireless cable operator and the lessee of the District's and the University's excess capacity, which WBS-WP will use in a wireless cable television system it is developing to serve the West Palm Beach metropolitan area. WBS-WP has affiliates presently operating similar systems in Melbourne and Fort Pierce, Florida; Sacramento, California; Boise, Idaho; and acquiring a system in Yakima, Washington;

WHEREAS, PCTV cannot construct or commence operating its E group station WMI841 until the District ceases operation of its E group station KHU-90;

WHEREAS, on December 29, 1993, PCTV and WBS-WP filed a Petition for Displacement and Application (the "Displacement Application") to modify KHU-90 to specify operation on the D group channels;

WHEREAS, the Displacement Application is mutually exclusive with the University's D group application (File No. BPLIF-920814DB), making grant of both applications impossible;

WHEREAS, the parties wish to reach a mutually agreeable settlement of their differences;

WHEREAS, the parties recognize that the microwave spectrum in the West Palm Beach metropolitan area could be used more efficiently by centralizing the origination point for all channels and eliminating use of ITFS frequencies as repeaters and/or



relay stations, and allowing commercial use of the E group channels and the H channels;

WHEREAS, the District and the University each recognizes that its ITFS purposes can more efficiently be served by a collocated operation of ten channels each at fifty watts, located on the District's Boynton Beach transmit tower (the "Collocation Site");

NOW, THEREFORE, in consideration of the mutual promises and conditions contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

1. To accommodate the settlement, PCTV, WBS-WP, the University and the District agree to resolve the mutually exclusive proposals for the D group ITFS channels by dividing the four channels between the University and the District. Accordingly, the University agrees to modify its application in File No. BPLIF-920814DB to specify operation on channels D3-D4 only, and the WBS-WP and PCTV agree to the modification of the Displacement Application to specify operation of KHU-90 on channels D1-D2 only. Furthermore, the District agrees not to object to displacement of station KHU-90 to channels D1-D2, and agrees to relocate the D1-D2 facilities to the Collocation Site.

2. To accommodate the settlement, the University will submit to the FCC for cancellation its authorizations for stations WLX-269, WHR-877, and WHR-894. The University will retain its B group and C group licenses for WHR-896 and WHR-901, respectively, and these facilities will be moved to the Collocation



Site so that more spectrum-efficient service to all of its receive sites is possible. The University will also retain its authorizations for stations WHR-895 and WHR-897, which stations will be used in the Ft. Lauderdale area, configured so as not to cause harmful interference to stations operating from the Collocation Site.

3. To further accommodate the settlement, the District will modify its G group authorization for KZB-29 and its A-group authorization for KZB-28 to collocate these facilities with WBS-WP's system. The District will submit to the FCC for cancellation its licenses for WHR-973 and WHR-994. Further, the District agrees to the assignment of its H channel facility (KZB-30) to WBS-WP, and the relocation of the H channel facility to the Collocation Site.

4. To further accommodate the settlement and eliminate potential interference, PCTV agrees to the relocation of its E group facility WMI841 to the Collocation Site.

5. The parties agree to cooperate with one another with respect to the filing of the applications and other papers required by this Agreement and agree not to interpose any objection to any filing which is consistent with this Agreement.

6. The parties agree to file the FCC applications required to effectuate this Agreement on or about the same day and to seek concurrent processing for all such applications. The parties agree that the modifications contemplated by the settlement will be installed concurrently so as to complete installation and



testing efficiently. The parties agree to coordinate the cut-over date with the University's and the District's educational schedules.

7. Whenever the context of this Agreement so requires, words used in the singular shall be construed to mean or include the plural and vice versa, and pronouns of any gender shall be construed to mean or include any other gender or genders.

8. This Agreement may not be modified or amended, except by a written instrument signed by each of the parties designating specifically the terms and provisions so modified and amended.

9. Each signatory to this Agreement represents that he or she has full legal authority to enter into, execute and perform the obligations of this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, successors and assigns.

10. This Agreement may be signed in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.



IN WITNESS WHEREOF, the parties hereto have executed this  
Market Settlement Agreement as of the dates written below.

THE BOARD OF REGENTS, a Public Corpora-  
tion of the State of Florida, on behalf  
of Florida Atlantic University

Date: 5/12/95

By Charles B. Reed  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: \_\_\_\_\_

By \_\_\_\_\_  
Jody Gleason, Chairman

Date: \_\_\_\_\_

By \_\_\_\_\_  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
Michael J. Specchio, President

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THE BOARD OF REGENTS, a Public Corpora-  
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of Florida Atlantic University

Date: \_\_\_\_\_

By \_\_\_\_\_  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: April 26, 1995

By Jody Gleason  
Jody Gleason, Chairman

Date: April 27, 1995

By C. Monica Uhlhorn  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
Michael J. Specchio, President

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By \_\_\_\_\_  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: \_\_\_\_\_

By \_\_\_\_\_  
Jody Gleason, Chairman

Date: \_\_\_\_\_

By \_\_\_\_\_  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: 4/20/95

By Jennifer Richter  
Jennifer L. Richter, Vice-President  
PEOPLE'S CHOICE TV, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
Michael J. Specchio, President

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of Florida Atlantic University

Date: \_\_\_\_\_

By \_\_\_\_\_  
Charles B. Reed, Chancellor

THE SCHOOL DISTRICT OF PALM BEACH  
COUNTY, FLORIDA

Date: \_\_\_\_\_

By \_\_\_\_\_  
Jody Gleason, Chairman

Date: \_\_\_\_\_

By \_\_\_\_\_  
C. Monica Uhlhorn, Superintendent

WIRELESS BROADCASTING SYSTEMS OF WEST  
PALM BEACH, INC.

Date: \_\_\_\_\_

By \_\_\_\_\_  
William Kingery, President

PEOPLE'S CHOICE TV, INC.

Date: 5/22/95

By  \_\_\_\_\_  
Michael J. Specchio, President

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Declaration of Michael J. Specchio

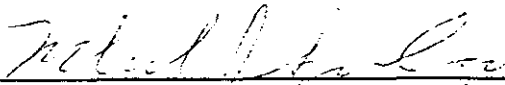
I, Michael J. Specchio, declare follows:

1. I am President of People's Choice TV, Inc., which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;

2. I certify that no monetary consideration was exchanged among the parties in consideration for the settlement; and

3. I certify that People's Choice TV, Inc. did not file any of the affected applications in order to procure the Settlement.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.

  
\_\_\_\_\_  
Michael J. Specchio, President

Date: 5/22/95



Declaration of Charles B. Reed

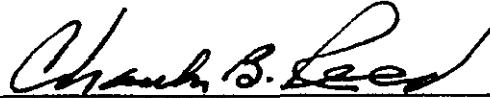
I, Charles B. Reed, declare follows:

1. I am Chancellor of The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;

2. I certify that no monetary consideration was exchanged among the parties in consideration for the settlement; and

3. I certify that The Board of Regents, a Public Corporation of the State of Florida, on behalf of Florida Atlantic University did not file any of the affected applications in order to procure the Settlement.

I declare that the foregoing is true and correct under penalty of perjury under the laws of the United States.



Charles B. Reed, Chancellor

Date: 5/12/95



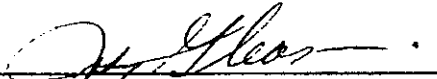
**Declaration of Jody Gleason**

I, Jody Gleason, declare as follows:

1. I am Chairman of The School Board of the School District of Palm Beach County, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;
2. I certify that neither the School District nor any of its principals has received monetary consideration for the settlement; and
3. I certify that The School District of Palm Beach County did not file any application in order to procure the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 26<sup>th</sup> day of April, 1995.

  
\_\_\_\_\_  
Jody Gleason, Chairman  
The School Board of Palm Beach County,  
Florida



Declaration of C. Monica Uhlorn

I, C. Monica Uhlhorn, declare as follows:

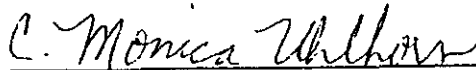
1. I am Superintendent of The School District of Palm Beach County, which is a party to the foregoing Market Settlement Agreement related to the West Palm Beach, Florida, area;

2. I certify that neither the School District nor any of its principals has received monetary consideration for the settlement; and

3. I certify that The School District of Palm Beach County did not file any application in order to procure the settlement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 27<sup>th</sup> day of April, 1995.



C. Monica Uhlhorn, Superintendent  
The School District of Palm Beach County,  
Florida